FILED
SEP 30 1970

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1969

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~~MISC. NO. 2172~~

TINA DEAL, et al.,

Petitioners,

vs.

THE CINCINNATI BOARD OF EDUCATION, et al.,

Respondents.

BRIEF IN REPLY TO SUPPLEMENTAL PETITION FOR CERTIORARI

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COURT INDEX PRESS, INC. — Law Printers — 809 Walnut Street, Cincinnati, Ohio 45202

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The Petitioners rely primarily upon a decision of the United States District Court for the Middle District of Tennessee, Nashville Division, in the case of *Robert W. Kelley, et al., Plaintiffs* v. *Metropolitan County Board of Education of Nashville and Davidson County, Tennessee, et al., Defendants.*

At the time of *Brown* v. *Board of Education,* 347 U.S. 483, 74 S.Ct. 686, 98 L. Ed. 873, 38 A.L.R. 2d 1180, the Tennessee Constitution, Article II, Section 12, provided the following for the governance of Tennessee schools:

> "No school established or aided under this section shall allow white and negro children to be received as scholars together in the same school."

Also at that time the Tennessee Code, Section 49-1005 provided:

> "The county board of education shall designate the schools which the children shall attend; provided, that

separate schools shall be established and maintained for white and for negro children."

In Ohio segregation has been unlawful since 1887. See 84 Ohio Laws 34.

The comparison of the law of Ohio with the law of Tennessee places in bold relief the distinction between the Metropolitan Board of Education of Nashville, and Davidson County, Tennessee, and Cincinnati, Ohio. Nothing in the opinion of the United States District Court for the Middle District of Tennessee in the above case has any relevance to the Cincinnati situation.

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